THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT L. ELMORE

Appeal No. 1999-1784
Application 08/710,853

ON BRIEF

Before COHEN, FRANKFORT and GONZALES, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 10, 11, and 17 through 19. Claims 12 through 16 and 20 through 24, the only other claims remaining in the application, stand withdrawn as being based upon a nonelected species, pursuant to 37 C.F.R.

§ 1.142(b).

Appellant's invention pertains to a hygienic air handler apparatus and to a method of supplying hygienic air.[1] A basic understanding of the invention can be derived from a reading of exemplary claims 10 and 17, copies of which appear in the APPENDIX to the main brief (Paper No. 9).

As evidence of obviousness, the examiner has applied the documents listed below:

Berlant	3,827,862	Aug. 6, 1974
Pacosz	4,990,313	Feb. 5, 1991

The following rejection is before us for review.

[1] Appellant's U.S. Patent No. 5,558,158, which matured from the parent application of the current application, claims a method of supplying hygienic air. The present application includes a disclaimer that the term of any patent shall not extend beyond the expiration date of U.S. Patent No. 5,558,158.

Claims 10, 11, and 17 through 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pacosz in view of Berlant.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 10), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 9 and 11).

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,[2] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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[2] In our evaluation of the applied references, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

We affirm the rejection of claims 10 and 11.

Independent claim 10 is drawn to a hygienic air handler apparatus comprising, inter alia, an indoor commercial and residential air handler enclosure having interior surfaces, with a dense, non-porous, highly reflective coating on the interior surfaces.

We find that the Pacosz reference (column 2, lines 6 through 25) addresses an air-return system of an air-conditioning unit that includes a housing 3 mounting a filter 7, a cooling coil 19, a drain pan 21, and a downstream blower fan 5. As disclosed, interposed within the housing 3, between the filter and cooling coil and pan, a ultraviolet device 11 is mounted in closest possible proximity to the cooling coil and pan to retard, or otherwise destroy, the bacterial accumulations and growth of mold spores or slime on and around the wet cooling coil and pan, as well as dust mites and airborne diseases from the return air, to purify the return air, to eliminate viral causing bacteria, pollens, and

pollutants.

As to the Berlant patent, we find that it teaches an air curtain having a sanitized air output to avoid contamination via the spread of airborne bacteria. As depicted in Fig. 2, the air curtain device includes a housing 16 supporting an air inlet guide 54 and a screen assembly 68d including a filter element 78. An elongated tubular ultraviolet light bulb 84 is secured within the air inlet guide. As explained by the patentee (column 3, lines 4 through 9),

> The inside surfaces of the walls 56 and 58 of the guide are preferably coated with a reflective substance, such as aluminum paint of the type sold under the trademark Alzak, which serves to reflect ultraviolet rays and to intensify and control radiation.

Additionally, it is noted that the filter element of Berlant is coated or treated with germicidal or bacteriostatic substances to protect the interior of the device from contamination when the ultraviolet light source is not in use.

Applying the test for obviousness,[3] we reach the conclusion that it would have been obvious to one having ordinary skill in the art, from a combined assessment of the applied teachings, to coat surfaces of the housing 3 of Pacosz, about the ultraviolet device 11, with a reflective paint. From our perspective, one having ordinary skill in the art would have been amply motivated to make the aforementioned modification to gain the expected benefit of reflecting ultraviolet rays to intensify and control radiation, following the teaching of Berlant. For these reasons, we support the rejection of claim 10. As to the content of claim 11, it is our opinion that applying primer before painting to assure proper paint adherence would have been obvious as simply the exercise of a well known practice. One of ordinary skill would have been expected to rely upon known practices to obtain

[3] The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

expected results.[4] Accordingly, we also affirm the rejection of claim 11.

We reverse the rejection of claims 17 through 19.

Claim 17 is drawn to a method of supplying hygienic air comprising, inter alia, coating substantially all of an interior of an indoor commercial and residential air handler with a high density, non-porous, highly reflective coating.

Based upon our analysis of the applied prior art, the evidence of obviousness would have only been suggestive of applying reflective coating about the ultraviolet device of Pacosz to reflect ultraviolet rays and enhance radiation, i.e., upstream of the cooling coil 19. From our vantage

[4] An obviousness question cannot be approached on the basis that an artisan having ordinary skill would have known only what they read in references, because such artisan must be presumed to know something about the art apart from what the references disclose. See In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). Further, a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

point, absent appellant's own teaching, the applied references themselves would not have been suggestive of coating "substantially all of an interior of an indoor commercial and residential air handler", as set forth in claim 17. For the above reasons, it follows that the rejection of claim 17, as well as of claims 18 and 19 dependent therefrom, must be reversed.

This panel of the board has, of course, fully considered each of the arguments advanced by appellant in the main and reply briefs. However, for the reasons given above and below, the arguments fail to convince us that claims 10 and 11 are patentable. We disagree with appellant's view that Pacosz is not a relevant reference (reply brief, page 1). First, this document, akin to appellant's air handler (Fig. 2), provides a housing for a filter, an ultraviolet device, a cooling coil, a drain pan, and a fan. Second, it appears to us that Pacosz is comparable to the prior art referenced by appellant in the specification (page 3) as "a proposed solution" to the moisture-mold growth problem in air handling systems. We are also not in accord with the advocated view that Berlant

teaches away from the present invention (reply brief, page 1). In our opinion, appellant has, inappropriately, narrowly focused only upon the specific structure of Berlant rather than upon its overall teaching as it would have been perceived by one versed in the art, i.e., the advantage of reflective coating surfaces about an ultraviolet device to enhance radiation.[5] As explained above, and contrary to appellant's view (main brief, page 11), the combined teachings of the applied references would have provided ample motivation for the proposed modifications, rendering the subject matter of each of claims 10 and 11 unpatentable under 35 U.S.C. § 103.

In summary, this panel of the board has affirmed the rejection of claims 10 and 11, but has reversed the rejection of claims 17 through 19 under 35 U.S.C. § 103.

The decision of the examiner is affirmed-in-part.

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[5] A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. See In re Burckel, 592 F.2d 1175, 1179, 201 USPQ 67, 70 (CCPA 1979).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN Administrative Patent Judge	)
CHARLES E. FRANKFORT Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND
JOHN F. GONZALES Administrative Patent Judge	) INTERFERENCES

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